IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 534 OF 2001

WITH

CIVIL APPLICATION NO. 388 OF 2004

Balkrishna Dinkar Gondhalekar ... Petitioner

versus

Kashiram Sonu Karabele

and ors. ... Respondents

...

Mr. P.N. Karlekar, for the Petitioner.

Mr. S.B. Shetye, for Respondents Nos. 1, 2-A to 2-C, 3 and 4.

Mr. Ketan G. Phadke, for Respondents Nos. 5 and 6.

...

CORAM : A.M.KHANWILKAR,J.

25th June 2004

P.C.:

. Heard Counsel appearing for the parties. Rule. Rule made returnable forthwith by consent.

Mr. Shetye and Mr. Phadke waive notice for the respective Respondents. As short question is involved, this petition is taken up for final disposal forthwith by consent.

2. This petition under Article 227 of the Constitution of India takes exception to the judgment and order passed by the Maharashtra Revenue Tribunal, Mumbai, dated December 1, 1999, in Revision No. Ten.R.A. 169 of 1998. The present proceedings have emanated from the inquiry under section 32G of the Bombay Tenancy and Agricultural Lands Act (for short, "the Act") for determination of purchase price in respect of the suit land. The first authority, by order dated October 31, 1996, fixed the purchase price in respect of the suit land, against which the Petitioner carried the matter in appeal before the Sub-Divisional Officer, who, in turn, dismissed the appeal by judgment and order dated July 6, 1998. The Petitioners then carried the matter in revision before the Tribunal, which has been dismissed by the impugned judgment and order dated December 1, 1999.

3. The main grievance of the Petitioner is that the Respondents-tenants are not entitled to purchase the suit land in excess of their entitlement in terms of the ceiling area as provided under section 32A of the Act. However, the authorities below have negated that argument on the reasoning that the issue is no more open as the Respondents-tenants are entitled to purchase the suit land to the extent of half portion in terms of the compromise arrived at between the parties before this Court in Special Civil Application No. 1094 of 1959 as recorded on 30th January 1960.

4. Having considered the rival submissions, I have no hesitation in taking the view that the approach of the authorities below is manifestly wrong. Indeed, the parties arrived at compromise before this Court as is correctly noted by the authorities below. Nonetheless, when the question of deciding the issue of the tenants having become deemed purchasers in respect of the portion of the suit land arose, it was obligatory on the part of the authorities to ascertain whether the land held by the tenants was or was

not in excess of the ceiling area and conform to the requirements of section 32A of the Act. It is only to the extent of the permissible ceiling area the tenants would be entitled to purchase the suit lands as deemed purchasers by virtue of that provision, compromise decree or order of a court of competent jurisdiction inter se the parties notwithstanding. The ceiling area is prescribed in section 5 of the Act. This inquiry has not been undertaken by the authorities below, for which reason the appropriate course is to set aside all the orders, which are subject matter of challenge in this petition and to relegate the parties before the Tahsildar, who, in turn, shall examine the issue in the context of the requirement of section 32A read with section 5 of the Act. The Tahsildar shall also examine the contention of the tenants that each of the tenants are entitled to separate share and possession in which case their holding does not exceed the ceiling area. That question be examined in accordance with law. All questions in relation to the entitlement of the tenants to purchase the suit lands having regard to section 32A read with section 5 of the Act are left open

to be decided by the tenancy authority. The Tenancy authority to decide the proceedings as expeditiously as possible preferably within six months from the date of receipt of writ of this Court. Parties to extend necessary co-operation to the tenancy authority for decision on the above terms.

5. At this stage, Mr. Shetye states that the Petitioner taking undue advantage of the status quo order granted by this Court is interfering with the possession of the Respondents-tenants in respect of suit lands. Mr. Karlekar fairly accepts that the compromise terms arrived at between the parties before this Court, as referred to above, clearly postulate that possession of half portion of the suit lands is made over to the tenants absolutely. If it is so, the status quo order would mean that the tenants, who are in possession by virtue of the compromise terms, would be entitled to cultivate the suit lands till appropriate orders are passed by the tenancy authority in accordance with law.

6. Writ Petition succeeds as indicated

above. Rule made absolute with no order as to costs.

7. In view of the above order, Civil Application stands disposed of.

8. All concerned to act on the copy of this order duly authenticated by the Court Stenographer of this Court.

(A.M.KHANWILKAR,J.)